

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CIT Technology Financing Services I LLC,)	FILED: AUGUST 21, 2008
a Delaware corporation,)	08CV4778
)	JUDGE PALLMEYER
Plaintiff,)	MAGISTRATE JUDGE NOLAN
)	Case Number: EDA
v.)	Assigned Judge:
)	
Capital Assurance Group, Inc., an Illinois)	Designated Magistrate Judge:
corporation,)	
)	
Defendant.)	

COMPLAINT

Plaintiff, CIT Technology Financing Services I LLC ("CIT"), a Delaware corporation, complains of defendant, Capital Assurance Group, Inc., an Illinois corporation ("Capital"), as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 as there is complete diversity among the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.
2. CIT is a Delaware corporation with its principal place of business in New Jersey.
3. Capital is an Illinois corporation with its principal place of business in Illinois.
4. Venue is proper in this district under 28 U.S.C. 1391(a) because all of the defendants reside in this district and because a substantial part of the events giving rise to the claims made herein occurred in this district.

Breach of Contract

5. On or about October 21, 2005, Capital entered into a lease agreement with Citicorp Vendor Finance, Inc. ("Citicorp") for the lease of certain copier equipment ("Lease")

more particularly identified in the Lease attached hereto as Exhibit A and invoices attached as Exhibit B.

6. On or about March 31, 2007, Citicorp assigned the Lease to CIT ("Assignment"). A copy of the Assignment is attached hereto as Exhibit C.

7. In accordance with the Assignment and Lease, Capital was to make 60 monthly payments in the amount of \$4,637 plus tax commencing on June 1, 2005. See page 1, ¶2 of Exhibit A.

8. Capital has failed to make any payments under the Lease since its last payment in or about February 5, 2007.

9. CIT performed all of its obligations under the Assignment and Lease.

10. As of August 19, 2008, the outstanding balance under the Lease is \$171,727.78 exclusive of any expenses accrued under the Lease, costs and/or attorneys' fees.

23. CIT is entitled to recover its attorneys' fees, costs, expenses, and other damages incurred in having to bring this action against Capital. See ¶10 of Exhibit A.

WHEREFORE, Plaintiff, CIT, prays that this Court enter a judgment in its favor and against defendant Capital as follows:

- A. For a judgment in the sum of \$171,727.78 plus any expenses accrued through the date of judgment in accordance with the terms set forth in the Lease;
- B. For costs and contractual attorneys' fees in connection with this action; and
- C. For any further relief as this Court deems just and proper.

The CIT Group/Equipment Financing, Inc.,
a Delaware corporation, Plaintiff

/s/ Agata P. Karpowicz
By: One of its Attorneys

Bruce Menkes (ARDC No. 6187337)
Agata P. Karpowicz (ARDC No. 6280323)
Mandell Menkes LLC
333 West Wacker Drive, Suite 300
Chicago, Illinois 60606
Telephone: (312) 251-1000

TERMS AND CONDITIONS

(10%) of the amount of such payment, plus interest on such amount at the rate of 1 1/2% per month from the due date until the date paid but as to each of the foregoing, not to exceed more than the maximum rate permitted by law

3. **NO WARRANTIES** We are renting the Equipment to you "AS IS". WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THIS AGREEMENT. We transfer to you for the term of this Agreement any warranties made by manufacturer or supplier to us. NEITHER SUPPLIER NOR ANY AGENT OF SUPPLIER IS AN AGENT OF LESSOR OR IS AUTHORIZED TO WAIVE OR MODIFY ANY TERM OR CONDITION OF THIS AGREEMENT. Notwithstanding the foregoing, we nor our officers, directors or shareholders shall be liable for any consequential or incidental damages.

4. **OWNERSHIP, REDELIVERY AND RENEWAL.** We are the owner of the Equipment and have title to the Equipment. To protect our rights in the Equipment, in the event this Agreement is determined to be a security agreement, you hereby grant to us a security interest in the Equipment and in any other equipment financed by us and/or our affiliates ("Other Equipment") and all proceeds, products, fruits or profits therefrom. In states where permissible, you hereby authorize us to cause this Agreement or any statement of other instrument in respect to this Agreement showing our interest in the Equipment and Other Equipment, including Uniform Commercial Code Financing Statements, to be filed or recorded and related and re-recorded and grant us the right to execute your name thereto. You agree to execute and deliver any statement or instrument requested by us for such purpose. You agree to pay or reimburse us for any searches, filings, recordings, stamp fees or taxes related to the filing or recording of any such instrument or statement. No more than one hundred eighty (180) days but not less than ninety (90) days prior to the expiration of the initial term of any renewal term of this Agreement you shall give us written notice of your intention to either return the Equipment to us or purchase the Equipment, as provided below. Provided you have given such timely notice, you shall return the Equipment, freight and insurance prepaid to us in good repair and working order, ordinary wear and tear excepted, in a manner and to a location designated by us or remit the purchase option. If you fail to do so timely, we shall have the right to resell the Equipment and you shall remain liable to 100% of the rent provided herein. In the event that you have been granted a purchase option and you do not exercise such option, then upon termination of this Agreement you shall return to us a one hundred fifty (\$150) dollar Equipment fee, payable upon your request for authorization to return the Equipment. This fee is payable in addition to shipping costs for return of Equipment.

5. **OPTION TO PURCHASE.** We hereby grant to you, provided you are not in default hereunder, the option to purchase "AS IS, WHERE IS" without express or implied warranties, all (not part) of the Equipment at the expiration of the term of this Agreement for its then in place in-use fair market value plus all applicable taxes.

6. **MAINTENANCE, RISK OF LOSS AND INSURANCE.** You are responsible for installing and keeping the Equipment in good working order. Except for ordinary wear and tear, you are responsible for protecting the Equipment from damage and loss of any kind. If the Equipment is damaged or lost, you agree to continue to pay rent. You agree during the term of this Agreement to keep the Equipment fully insured against damage and loss, naming us as the loss payee, to obtain a general public liability insurance policy from a company acceptable to us, including us as an additional insured on the policy. You agree to provide us certificates or other evidence of insurance. Should you fail to provide such insurance, you agree that we may obtain such insurance and charge you therefor.

7. **INDEMNITY.** We are not responsible for any losses or injuries caused by the installation or use of the Equipment. You agree to reimburse us for and to defend us against any claims for loss or injury (including attorney's fees and costs) caused by the Equipment.

8. **TAXES AND FEES.** You agree to pay when due or reimburse us for all taxes, fees, fines and penalties relating to use or ownership of the Equipment or to this Agreement, now or hereafter imposed, levied or assessed by any state, federal or local government or agency. You agree to pay us a non-refundable origination fee of \$47.50 in connection with this Lease. Equipment located in various states may be subject to sales tax laws which require that tax be paid up front. If you choose to pay this tax up front, you authorize us to advance the tax and increase your monthly payment by an amount equal to the current tax percentage applied to the monthly rental shown above.

EQUIPMENT LOCATED IN VARIOUS STATES is subject to sales tax laws which require that tax be paid up front. If you choose to pay this tax up front, you may include with your security deposit your check for the current percent of tax applied to the cost of Equipment. If you do not include payment up front, you authorize us to advance the tax and increase your monthly payment by an amount equal to the current tax percentage applied to the monthly rental shown above.

9. **LOCATION OF EQUIPMENT.** You will keep and use the Equipment only at your address shown above. You agree that the Equipment will not be removed from that address unless you get our written permission in advance to move it. You agree that the Equipment will be used for business purposes only.

10. **DEFAULT AND REMEDIES.** If you (a) fail to pay rent or any other payment hereunder and/or under any other agreement with us or our affiliate concerning the finance of Other Equipment when due, or (b) breach any representation or warranty or fail to perform any of the other terms, covenants or conditions of this Agreement and/or under any other agreement with us or our affiliate concerning the finance of Other Equipment after ten (10) days written notice, or (c) sustain a substantial delinquency on one or more of your other obligations, or (d) become insolvent or make an assignment for the benefit of creditors or file a petition under bankruptcy code or one is filed against you, or (e) a receiver, trustee, conservator or liquidator is appointed with or without your consent, you shall be in default under this Agreement and, we may, to the extent permitted by applicable law, exercise any one or more of the following remedies: (i) declare due, due for and receive from you the sum of all rental payments and other amounts then due and owing under this Agreement or any schedule thereto, plus the present value of (ix) the sum of the rental payments for the unexpired term of this Agreement (but in no event less than 15% of the original cost of the Equipment) and (x) the anticipated value of the Equipment at the end of the initial term or applicable renewal term of the Agreement (but in no event less than 15% of the original cost of the Equipment), discounted at the rate of 6% per annum and upon recovery of the same in full, the Equipment shall become your property; (ii) to similarly accrete if a balance due under any other agreement between you and us and/or any affiliate of ours concerning the finance of equipment; (iii) to take immediate possession of the Equipment and/or the Other Equipment, and to lease or sell it or any portion thereof, upon such terms as we may elect and to apply the net proceeds less reasonable selling and administrative expenses on account of your obligations hereunder; (iv) require you to return all Equipment and/or the Other Equipment at your expense to a place reasonably designated by us; (v) to charge you for all the expenses incurred in connection with the enforcement of any of our remedies including all costs of collection, reasonable attorney's fees and court costs. Lessee shall also be liable for the attorney's fees and costs incurred by Lessor after a judgement has been entered against Lessee by any court. Such an amount shall be payable in addition to all amounts payable by you as a result of the exercise of any of the remedies provided herein. All our remedies are cumulative and in addition to any other remedies provided for by law and may, to the extent permitted by law, be exercised either concurrently or separately. Exercise of any one remedy shall not be deemed an election of such remedy or to preclude the exercise of any other remedy. No failure on our part to exercise any right or remedy and no delay in exercising any right or remedy shall operate as a waiver of any right or remedy or to modify the terms of this Agreement. A waiver of default shall not be construed as a waiver of any other or subsequent default. We shall retain the sum set forth above as a security deposit for your performance of your obligations hereunder. Upon lawful termination of this Agreement, provided you are not in default, the Security Deposit shall be returned to you. No interest shall be paid upon said Security Deposit in the event of default. We may apply said Security Deposit to cure any default.

11. **ASSIGNMENT.** YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN, THIS AGREEMENT OR SUBLEASE THE EQUIPMENT. We may sell, assign or transfer this Agreement without notice. You agree that if we sell, assign or transfer this Agreement, the new owner will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the right of the new owner will not be subject to any claims, defenses or set offs that you may have against us. In the event of a sale, assignment or transfer, we agree to remain responsible for our obligations hereunder.

12. **CONSENT TO JURISDICTION AND GOVERNING LAW.** YOU CONSENT TO THE PERSONAL JURISDICTION OF THE COURTS OF THE STATE OF NEW JERSEY WITH RESPECT TO ANY ACTION ARISING OUT OF THIS AGREEMENT OR THE EQUIPMENT. THIS MEANS THAT ANY LEGAL ACTION FILED AGAINST YOU MAY BE FILED IN NEW JERSEY AND THAT YOU MAY BE REQUIRED TO DEFEND AND LITIGATE ANY SUCH ACTION IN NEW JERSEY. You agree that service of process by certified mail, return receipt requested, shall be deemed the equivalent of personal service in any such action. However, nothing in this paragraph shall be construed to limit the jurisdictions in which suit may be filed by any party to this Agreement or the means of obtaining service of process in any such suit. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW JERSEY, BUT ONLY TO THE EXTENT SUCH STATE LAW IS NOT PREEMPTED BY FEDERAL LAW OR REGULATION. TO THE EXTENT PERMITTED BY LAW, YOU WAIVE TRIAL BY JURY IN ANY ACTION HEREUNDER. YOU HEREBY WAIVE ANY AND ALL RIGHTS AND REMEDIES GRANTED YOU BY SECTION 2A:508 THROUGH 2A:522 OF THE UNIFORM COMMERCIAL CODE.

13. **CUSTOMER P.O.** You agree that any Purchase Order issued to us covering the rental of this Equipment, is issued for purposes of authorization and your internal use only and none of its terms and conditions shall modify the terms of this Agreement.

14. **ENTIRE AGREEMENT.** You agree that we may insert or correct missing information on this Agreement including your legal name and the Equipment's description, serial number and location otherwise this Agreement contains the entire arrangement between you and us and no modifications of this Agreement shall be effective unless in writing and signed by the parties.

ACCEPTED BY
CITICORP VENDOR FINANCE, INC., LESSOR
ONE INTERNATIONAL BLVD. • MAHWAH, NJ 07430-0631

BY MAHWAH VENDOR FINANCE, INC. TITLE VP DATE 10-31-08

FORM CUMMINS-29 REV 1000-2

08CV4778
JUDGE PALLMEYER
MAGISTRATE JUDGE NOLAN

INVOICE

CHICAGO OFFICE TECHNOLOGY GROUP
Column Office Equipment
Distinctive Business Products
4 Territorial Ct
Bolingbrook IL 60440
630-771-2600

200160137

INVOICE NUMBER FINASURE

DATE September 30, 2005

PO NUMBER : 200160137

SHIPPED VIA

F.O.B.

SOLD TO:

CITI CAPITAL CORPORATION
1800 OVERCENTER DRIVE
MOBERLY, MO 65270

SHIPPED TO:

FINASURE HOME LOANS LLC
1436 W RANDOLPH ST
#400
CHICAGO IL 60607

INVOICE	DESCRIPTION	PRICE	AMOUNT
7	RICOH 2051SP COPIERS S/N K6755500312 / K6755600026 / K6755600024 / K6755600018 / K6755500012 / K6755500011 / K6755600023 WITH FINISHERS / PUNCH KITS / 256MB	\$25,500 00	\$178,500 00
2	RICOH 7200 COLOR COPIERS S/N Q3750700167 / Q3750700168 WITH FINISHERS	20,500 00	41,000 00
1	TOSHIBA E550 COPIER S/N STH2110417 WITH FINISHER	9,500 00	9,500 00
1	TOSHIBA E28 COPIER S/N SF331155 WITH RADF / KD1009 / MY1012 / MJ6001	6,341 54	6,341 54
-1	UPGRADE TO RETURN LEASE #3018070	-5,380 98	-5,380.98
-1	UPGRADE TO RETURN LEASE #3018071	-5,883 15	-5,883 15
-1	UPGRADE TO RETURN LEASE #3018073	-2,085 10	-2,085 10
-1	UPGRADE TO RETURN LEASE #3018074	-11,093 04	-11,093 04
-1	UPGRADE TO RETURN LEASE #3018075	-22,351 29	-22,351 29
-1	UPGRADE TO RETURN LEASE #3753340	-13,888 60	-13,888 60
-1	UPGRADE TO RETURN LEASE #3764330	-3,775 36	-3,775 36
SUBTOTAL			CONT'D
TAX			
FREIGHT			
TOTAL			CONT'D >>>>



CHICAGO OFFICE TECHNOLOGY GROUP

Column Office Equipment
Distinctive Business Products
4 Territorial Ct
Bolingbrook IL 60440
630-771-2600

INVOICE

200160137

SOLD TO:

CITI CAPITAL CORPORATION
1800 OVERCENTER DRIVE
MOBERLY, MO 65270

INVOICE NUMBER FINASURE

DATE September 30, 2005

PO NUMBER : 200160137

SHIPPED VIA

F.O.B.

SHIPPED TO:

FINASURE HOME LOANS LLC
1436 W RANDOLPH ST
#400
CHICAGO IL 60607

INVOICE	DESCRIPTION	PRICE	AMOUNT
-1	UPGRADE TO RETURN LEASE #3018072	-712 00	-712 00
		SUBTOTAL	\$170,172.02
		TAX	
		FREIGHT	
		TOTAL	\$170,172.02

NOTICE

Please be advised that pursuant to a certain Purchase & Sale Agreement dated as of March 31, 2007, Citicapital Technology Finance, Inc., a Pennsylvania corporation, and Citicorp Vendor Finance, Inc., a Delaware corporation (each, a "Seller", collectively, "Sellers") have sold, granted, conveyed and assigned all of their respective right, title and interest in the contract(s) listed on Schedule A hereto and any and all related receivables, equipment thereunder and ancillary documentation thereto to CIT Technology Financing Services I LLC ("Purchaser"). This transaction closed as of 11:59 P.M. (EST) on April 30, 2007.

It is Sellers' and Purchaser's intent that this document be used as evidence in legal proceedings of the transfer and assignment of the contract(s) and any all related equipment thereunder and ancillary documentation thereto by Sellers to Purchaser and their successors and assigns. Sellers by execution below and Purchaser by acceptance hereof do consent to the filing of this Notice in court proceedings for such purpose.

IN WITNESS WHEREOF, each Seller has caused this Notice to be executed in its name and by an authorized officer as of April 30, 2007.

Citicapital Technology Finance, Inc.

By: Mary C. Tucker
Mary C. Tucker
Deputy General Counsel – Litigation Management

Citicorp Vendor Finance, Inc.

By: Mary C. Tucker
Mary C. Tucker
Deputy General Counsel – Litigation Management

CIT Technology Financing Services I LLC

By: Rob Arrington
Name: Rob Arrington
Title: President

